



U.S. Department of Justice

**National Domestic Communications Assistance Center
Executive Advisory Board**



June 8, 2018

Ms. Alice Bardney-Boose
NDCAC EAB Designated Federal Officer
Federal Bureau of Investigation
Operational Technology Division
Building 27958A
Quantico, Virginia 22135

Dear Alice,

I have reviewed the minutes and hereby certify that they accurately reflect the proceedings from the April 11, 2018 National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB) meeting held in Alexandria, Virginia.

Sincerely yours,

/s/ Preston Grubbs

Preston Grubbs
Assistant Administrator
Operational Support Division
Drug Enforcement Administration
Chairman, NDCAC EAB
Preston.L.Grubbs@usdoj.gov

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National Domestic Communications Assistance Center Executive Advisory Board Meeting Minutes April 11, 2018



The Executive Advisory Board (EAB) of the National Domestic Communications Assistance Center (NDCAC) convened for its fourth meeting on April 11, 2018, at 12:00 P.M., at the Hilton Mark Center, 5000 Seminary Rd., Alexandria, VA 22311.

The meeting was called to order by the NDCAC EAB Designated Federal Officer (DFO) Alice Bardney-Boose. DFO Bardney-Boose welcomed all attendees to the NDCAC EAB meeting and provided a brief overview of meeting logistics.

Mr. Preston Grubbs, NDCAC EAB Chairman, provided the group an overview of the meeting agenda (see **Appendix A**) and introduced Board members (see **Appendix B**) and attendees (see **Appendix C**). Chairman Grubbs congratulated Edgar Remspecher on his nomination for the position of NDCAC Deputy Director and stated that Mr. Remspecher's nomination package is awaiting signature from the Attorney General. Once the nomination package is signed, the Drug Enforcement Administration (DEA) will backfill Mr. Remspecher's previous NDCAC position. Chairman Grubbs thanked Mr. Remspecher for accepting the nomination and expressed his belief that Mr. Remspecher will be an excellent addition to the NDCAC.

Chairman Grubbs continued by reviewing the NDCAC mission statement (see **Appendix D**). Strategic objectives, allowing NDCAC's progress to be measured, were amended to the mission statement at the previous Board meeting. Chairman Grubbs stated that he would like the mission statement to be a living document to evolve as the NDCAC matures. Chairman Grubbs conveyed that he would like the document to be finalized and for the NDCAC to revisit it periodically.

Board members commended Chairman Grubbs for putting together a thorough mission statement and mission priorities document that can serve as a strategic plan. Members stated the mission statement and mission priorities document will prove to be extremely valuable and a good step forward for the NDCAC. Members agreed to alter the verbiage under the training section of the document to ensure the NDCAC does not limit the training it offers. NDCAC Director Marybeth Paglino affirmed the mission statement and priorities document is helpful for the NDCAC as a road map for where the NDCAC needs to go and what it needs to do. Director Paglino communicated that all Board guidance and perspectives are helpful to NDCAC.

A member inquired of the Board if anyone was familiar with any group or body of Federal and State representatives that advocates for law enforcement based on technological challenges. Director Paglino stated certain groups advocate for law enforcement but she is unsure of their compositions. Another member stated that a joint technology task force that will advocate for law enforcement is currently being assembled and waiting for approval within the International Association of Chiefs of Police (IACP). The task force will include IACP members, the Federal Bureau of Investigation (FBI), other agencies, and Brooks Bawden. With respect to educating legislators, a member stated the Board and NDCAC seem to be in the best position right now and

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acknowledged that even though obtaining Going Dark data has been difficult, education remains important. Chairman Grubbs stated the DEA often educates staffers on Going Dark issues and NDCAC's role in Going Dark. Mr. Grubbs explained that part of the solution lies with the Board members advocating for NDCAC and referring Going Dark questions to the NDCAC.

The Board's attorney reminded members the Board's responsibility is to inform the Attorney General and the Board must be cognizant that certain members, as representatives of the Executive Branch can inform, but not advocate. Director Paglino clarified that the mission statement was developed for the NDCAC, not the Board. The Board's mission and priorities are outlined in the Charter. A member requested that 'promoting best practices' replace the word 'leverage' with respect to training. Director Paglino explained why the word 'leverage' is important and should remain, but stated that promoting best practices should also be incorporated in the mission priorities under the training section.

Director Paglino presented the Board with an update highlighting recent activities at the NDCAC (see **Appendix E**). Director Paglino reviewed the fiscal year (FY) 2018 budget and identified areas on which the NDCAC spends funding. She identified statistical information about the NDCAC's Technical Resource Group (TRG) and announced that the NDCAC's secure website is now under FBI.gov. Existing users can switch to the new log-in process or continue accessing the website through the Law Enforcement Enterprise Portal (LEEP). TRG is handling the multifactor authentication process required by each user to access the secure website and the retention rate has increased by fifty percent since inception.

Director Paglino continued with an overview of information, services, and tools available to law enforcement on the NDCAC secure website. She explained that NDCAC offers training on a variety of tools and services that enhance law enforcement knowledge of communication applications, social media applications, and open source techniques.

Director Paglino updated the EAB on law enforcement and industry outreach meetings which include discussions on how the NDCAC benefits industry. NDCAC continues to interact with service providers to gain a better understanding of future services and technologies and to understand impacts to law enforcement investigations. Director Paglino also shared that more law enforcement representatives are learning about the NDCAC. The majority of new NDCAC clients learned about the NDCAC through a law enforcement colleague or at a regional NDCAC training event.

Mr. Kenn Kern, of the New York County District Attorney's Office, assumed the floor and provided information (see **Appendix F**) about two recently released reports that spoke of encryption developed by: *The National Academy of Sciences Report* and the *East West Institute Report*. These reports discuss privacy, security, and address the benefits of increased discussion about technology and its impact on law enforcement. The reports have sparked conversation about

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law enforcement legally accessing devices and its direct impact on human rights. Although both reports highlight the Going Dark issue, each report takes a different approach to finding a legally appropriate solution. The East West Institute Report provided nine (9) recommendations for policymakers whereas the National Academy of Sciences Report presented an evaluation framework that outlined eight (8) questions for policymakers to think about. The East West Institute Report proposed two rules that could enable law enforcement to legally access encrypted data in limited situations. However, the National Academy of Sciences Report identified three technologists that suggest that there is currently a workable path for accessing devices involved in crimes and they intend to test these methods and develop a device-based solution.

Mr. Kern stated that there are quantitative and qualitative sides of Going Dark. Over ninety-nine percent of the world's phones are operated by Apple or Google and their operating systems allow the companies to no longer assist law enforcement with search warrants for locked devices. According to Mr. Kern, criminals are aware of the protection that encrypted devices provide to them. In short, encrypted devices continue to interfere with law enforcement investigations. Mr. Kern emphasized that over fifty percent of locked devices contained additional evidence that led to prosecution or exoneration.

Mr. Kern concluded his presentation with a brief overview of the Statistics Collection Tool. This tool was a combined effort of numerous agencies and associations to better quantify the Going Dark impact on law enforcement investigations. Gathering statistical information will allow NDCAC to measure impacts and better assist law enforcement in its efforts to fully investigate cases. Agencies wishing to contribute should contact the NDCAC TRG.

Mr. Derrick Driscoll provided the report of the EAB Administrative Subcommittee. Mr. Driscoll began by congratulating Mr. Remspecher on his nomination as NDCAC Deputy Director and confirmed that his nomination package is currently with the Department of Justice.

Mr. Driscoll proceeded with an update on the Attorney General Report and stated that the Report is currently with the Office of the Deputy Attorney General. Mr. Driscoll explained to Board members and attendees that approvals can take a considerable amount of time because of the large number of people who must review a given document or proposal. A member stated that just because things don't proceed quickly doesn't mean it is not a priority. With respect to the Report and its recommendation that the Attorney General meet with members of the Board, Mr. Driscoll stated he has had the pleasure of giving briefings before the Attorney General and Deputy Attorney General and they are very engaged, want to fix problems, and want to know about and hear possible solutions. He feels that there is a realistic possibility the Board will have a chance to speak to the Attorney General.

Mr. Driscoll continued with an important reminder about the Board Charter. The initial charter was approved in 2014 and the current iteration will expire on June 23, 2018. The new charter has

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already received approval by the General Services Administration (GSA) and is currently at the Executive Secretariat level. Once the Executive Secretariat obtains approvals of the Charter, it will move to the Department of Justice for final approval.

Mr. Driscoll proceeded to discuss the draft communications plan (see **Appendix G**), affirming that it is thorough and well thought out. The communications plan was developed to provide the NDCAC a roadmap for increasing awareness and understanding about the NDCAC through methods such as training, marketing and communication materials, the NDCAC website, and quarterly newsletters. Mr. Driscoll opened the floor for discussion of the draft communications plan. A member stated that attendance at law enforcement events like International Association of Chiefs of Police (IACP) and Major City Chiefs of Police would help spread the word about the NDCAC. Director Paglino informed the Board members the NDCAC's secure website helps with awareness and communication with state and local law enforcement representatives. Members agreed with Director Paglino, suggesting that everyone be pointed to the NDCAC website where information is easily accessible. Mr. Driscoll stated that so long as NDCAC can meet client needs after they are referred to the website, the NDCAC will be on the right path. A risk factor recognized by the group was that a rapid expansion, in the absence of prioritization, would expend the NDCAC's limited resources. Director Paglino stated the NDCAC would ask for more resources if it demonstrated the need (i.e., a growing law enforcement client base). Mr. Driscoll agreed and expressed his desire for the Board to approve the draft communications plan.

A motion to accept the recommendation, with the understanding the NDCAC prioritize items in the Plan, was made and seconded. The members of the EAB unanimously approved the recommendation.

Mr. Michael Sachs, Technology Subcommittee Chairman, briefed the Board on the outcome of the first Subcommittee meeting. At the initial meeting on February 22, 2018, all Subcommittee members were acquainted with the NDCAC and tasked to identify current challenges faced by law enforcement with respect to the acquisition of digital evidence. Mr. Sachs reviewed several challenges the Subcommittee identified. Data-in-motion was the first issue the Subcommittee identified. Encryption of mobile applications hindered lawful interception of data-in-motion and continued to impede investigations. Mr. Sachs stated that he is often asked how the data-in-motion issue can be quantified or explained. He articulated that law enforcement needs to talk about the impact on individual cases and the importance of sharing this information. Mr. Sachs also suggested the Board might be able to provide examples of how law enforcement investigations have been negatively affected to the Attorney General. Data-at-rest was a second issue identified by the Technology Subcommittee. Evidence collection on communication devices has been increasingly difficult for law enforcement to obtain.

Lack of uniform industry standards was another issue identified by Subcommittee members. There is no consistent explanation of the data kept by providers and there is no mandated retention period.

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Furthermore, law enforcement officers never know how they will receive requested data from service providers. Tools that have been created to parse data received by service providers often become invalid when service providers change their delivery format. The Subcommittee suggests the NDCAC enter into discussions with service providers about working with law enforcement on creating a standard format for the delivery of data. Further, updated and easily available law enforcement guidelines from providers would be helpful.

With respect to international providers (i.e., providers outside the borders of the United States), the Subcommittee recognized that continuous collaboration with service providers and use of mutual legal assistance treaties (MLAT) may lessen the obstacles facing law enforcement. However, the experience of members of the Subcommittee points to an average response time of one and one-half years to MLAT requests.

Technical location capabilities were identified as an issue in rural areas of the United States. Law enforcement officers are often unaware of what location information is available to them in rural areas. A lack of resources is an issue experienced often by many law enforcement agencies, particularly those in more rural areas. Limited resources can also inhibit agencies from acquiring the tools needed to follow best practices and keep up with rapidly changing technology. Subcommittee members also noted current legislation has not kept up with technological innovation and the lack of parallel advancements (in technology and legislation) inhibits law enforcement's ability to plan for future issues.

Mr. Sachs concluded his remarks by extending an invitation for others to join the Technology Subcommittee. A member suggested that NDCAC join the joint technology task force mentioned earlier in the meeting. Another member thanked Mr. Sachs for an excellent presentation and asked, "What other examples could the Board come up with to tie these issues into the national narrative?" Members suggested that examples of MS-13, domestic violence, and issue involving Facebook and Cambridge Analytica.

Chairman Grubbs opened the floor for any additional comments and recommendations and, having heard none, turned the floor over to DFO Bardney-Boose.

DFO Bardney-Boose briefly discussed administrative items including possible dates for the next EAB meeting. She requested that Board members notify her if November 7, 2018 or November 14, 2018 would be a better day for the next meeting. DFO Bardney-Boose informed members that she will undertake membership renewals for all Board members for the new Charter. She requested that if anyone that has an issue with renewal to let her know as soon as possible. DFO Bardney-Boose concluded by stating no public comments were received in advance of the meeting. She thanked the members for participating and adjourned the meeting.

Appendices cited in these minutes are available separately.